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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,466

11/14/2005

Gerhard Albrecht

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23575

7590

05/26/2006

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EXAMINER

MARCANTONI, PAUL D

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/524,466

Applicant(s)

ALBRECHT ET AL.

Examiner

Paul Marcantoni

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1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-18 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

New Matter:

Claims 6-18 are rejected under the first paragraph of 35 USC 112 and 35 USC 132. Applicants' newly added claims would appear not supported by original disclosure. This rejection will be withdrawn upon a showing of location of support from original claims or original disclosure (specification) for each claim.

35 USC 112 First Paragraph:

Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The applicants specification would appear to only enable applicants' invention to only one specific polymer MVA 2453 L/44% ex Degussa on page 8 of applicants' specification (Example 1). Applicants would not appear to have support other combinations as set forth, for example in claim 1 for their polymer.

35 USC 112 Second Paragraph:

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

The independent claims such as claim 1 are indefinite because it would appear unclear if only one polymer or multiple polymers. For example, if only one polymer,

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does it require having structures a), b), c) and d). It would not appear to be clear because it would require that one polymer to potentially have all 4 structures (each one of a,b,c, and d).

The applicants also use trademarks in their specification (Degussa) and Glenium yet provide no data sheet to describe exactly what they are and how they relate to their claimed invention. Applicants are respectfully requested to submit data sheets teaching what these materials are for clarification of the original disclosure (See p. 8 of specification).

35 USC 103:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schapira et al. '236 or Persinski et al. ('845 or '921) alone or in view of Albrecht et al. (US Patent No. 5,369,198) and Albrecht et al. (WO 00/77058 A1).

Schapira et al. '236 teach a composition to improve the rheological properties of cement and increase duration of workability and dispersability which includes adding a stabilizing agent capable of forming a chelate with the calcium ions of the cement based product. Schapira et al. teach the addition of a citric acid as a stabilizing agent (col.3, lines 24-30) and also 2-phosphonobutane-1,2,4 tricarboxylic acid (see col.5, lines 45-52. Schapira et al. also teach the addition of a superplasticizer. It is the examiner's

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position that the use of another known polymer that functions to improve the flowability and dispersability of cement would have been an obvious design choice for one of ordinary skill in the art because they are functionally equivalent.

Perskinski et al. '854 or '921 both teach that the addition of 2-phosphonobutane 1,2,4 tricarboxylic acid as a flow improving and turbulence inducing additive and thus also increase flowability and workability of the cement (See claim 3, col.10).

The applicants claimed polymer (3) in claim 1 (for example) is within the teaching of the Albrecht references. Albrecht et al. essentially teaches an flowability improving additive in their polymer which is the same as the polymer (3) as claimed by applicants for their invention (see applicants' claim 1). It would also have been an obvious design choice for one of ordinary skill in the art to combine two known dispersing or flow improving additives to cement because both are known for the same function of dispersing or flow improvability.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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